



Request for City Council Committee Action from the Department of Intergovernmental Relations

Date: January 23, 2014

To: Chair Elizabeth Glidden and Vice Chair Alondra Cano

Referral to: Intergovernmental Relations Committee

Subject: Federal Communications Commission (FCC) – Proposed Rules Regarding the Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting.

Recommendation: Authorize the City to submit comments and reply comments to the proposed FCC rule.

Previous Directives: The City has previously commented on FCC rules that impact City planning and management of the public right of way. A copy of the city's July 2011 comments, authorized by the City Council on July 1, 2011, is attached.

Department Information

Prepared by: Gene Ranieri, Director, Intergovernmental Relations Department

Approved by: _____

Presenters in Committee: Gene Ranieri

Supporting Information

The Federal Communications Commission has issued a request for comments on proposed rules that would accelerate the expansion of wireless broadband services nationwide. The proposed rules, however, would, pursuant to a recent federal statute and pursuant to claimed administrative authority of the FCC, potentially limit the zoning authority of state and local governments nationwide. It could also limit the authority of state and local governments to manage their own rights of way and could conceivably force local governments to accept commercial communication facilities on their own property. The proposed rules could allow wireless providers to add facilities to existing buildings, towers and other structures in the public rights of way with limited government control. The proposed rules could also make it difficult for state and local governments to control ground equipment and various communication accessories located in the public right of way.

The FCC announced this rulemaking saying: "This Notice of Proposed Rulemaking addresses potential measures to expedite the environmental and historic preservation review of new wireless facilities, as well as rules to implement statutory provisions governing State and local review of wireless siting proposals."

The FCC has explained their intent further in a complex document of over 170 pages. They have made clear their intent to eliminate state and local approvals as an "obstacle" to broadband deployment. As one might expect from a single subject matter agency, they have, so far, shown a limited understanding of the importance of the many diverse interests that local governments must balance in governing municipal planning, municipal historic preservation, municipal management of the right of way, and protection of the right of way for present and future transportation uses. These comments are an opportunity for the City to make clear some of our specific concerns about what they are suggesting as possible regulation and general concerns about their proposal to ignore state sovereignty in strongly pushing to eliminate "obstacles" to broadband deployment.

The City Attorney's office is recommending that the city submit comments to the FCC. National governmental organizations such as the National League of Cities, National Association of Counties, the U.S. Conference of Mayors, and the National Association of Television Officers and Advisors "will all be filing comments at the 30,000 foot level," says one of the lawyers at the national level. Comments at the local level about our specific experience are potentially useful, however. Individual cities are being strongly encouraged to file comments. The comments would have the same tenor as our July 2011 comments and would provide specific perspectives from our staff on municipal regulation of communication facilities in regard to some of the 172 points raised in the FCC Notice. Comments are due February 3, 2014, with reply comments due March 5, 2014.